

PUBLIC DOCUMENT

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Voluntary Consent to Access Property Interim Agreement

The United States Environmental Protection Agency Region 8 (EPA), pursuant to the authority vested in the President by the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. § 9601, *et. seq.*, seeks a right of entry and access to property owned by ASARCO Incorporated (Asarco), generally described as the Asarco Globe Plant. The Globe Plant encompasses 89 acres, located in Adams and Denver Counties, with a street address of 495 East 51st Street, Denver, Colorado 80216-2098. The Globe Plant is generally depicted on the map attached hereto as Appendix A. EPA seeks the right of access and entry to a portion of the Globe Plant for the purpose of establishing a staging, storage and/or placement area for soils removed from residential properties within the Vasquez Boulevard/I-70 Superfund Site.

Asarco confirms that it owns and controls the Globe Plant and hereby voluntarily consents to provide EPA and the State of Colorado and their employees, contractors and authorized representatives an interim right of entry and access during daylight hours on Mondays through Saturdays to the staging/storage/placement area depicted on Appendix A (hereinafter referred to as the "storage area") for the purpose of establishing a staging and/or storage area for soils removed from residential properties within the Vasquez Boulevard/I-70 Superfund Site. This interim right of entry and access shall be granted upon the date of execution of this Agreement by Asarco and shall continue until April 15, 2004, extended by mutual agreement of the parties until May 1, 2004 or until such time as this Agreement is superseded by the anticipated subsequent consent decree that will also address access. This interim right of entry and access can be extended with the written approval of both parties.

Asarco grants access and entry to EPA and the State and their employees, contractors and authorized representative to perform activities necessary to establish and maintain a staging, storage and/or placement area for soils removed from residential properties within the Vasquez Boulevard/I-70 Superfund Site. In addition to transport of soils, activities for which access is granted consist of:

1. Construction and maintenance of any storage structure, pile or related fixture, such as fencing, in the storage area;
2. Placement of a construction trailer or similar temporary office facility, or use of existing facilities of this type, in the location specified on Appendix A;
3. Performance of general inspections, testing (including soil and ground water testing), or maintenance activities in the storage area; and
4. Performance of any other activities necessary to ensure the storage area is secure and not allowing a release of the hazardous substances brought to the Globe Plant.

The consideration for the use of the Globe Plant as a staging, storage and placement area as provided by this Agreement, will not be addressed in this interim agreement but will be addressed in the anticipated subsequent consent decree. However, in the event EPA and Asarco cannot reach agreement on the terms of such a subsequent consent decree, EPA will pay Asarco \$11.25 for each cubic yard of soils remaining on the Globe Plant from EPA remedial action at OU-1 at the VB/I70 Site. In that event, the payment will be due 60 days after expiration of this agreement. Any VB/I70 OU-1 soils placed on the Globe Plant pursuant to this agreement shall be maintained by ASARCO in Accordance with the Preliminary Design Report Plant Site Operable Unit, Globe Plant Surface Soils dated February 22, 1994.

The parties hereto agree that the foregoing conditions are conditions precedent to the granting of access and are not compensation for a taking but rather reflect the negotiated value of the use of the property as a storage, staging and/or placement area as described above. The parties agree that this Agreement is not determinative of the property's value nor value of EPA's placement of VB/I70 OU-1 soils on the Globe Plant and that they both reserve their rights with respect to the issue of the value of the use of the land. The parties further agree that this document is not admissible for any purpose except as to any dispute regarding this Agreement.

The undersigned representatives of each Party to this Agreement certify that he or she is fully authorized to enter into this Agreement of behalf of EPA and Asarco, respectively.

EPA:

By: Mark H. Gordon

Date: 4/8/04

ASARCO Incorporated:

By: D.E. MacCister
V.P., G.C. & Sec.

Date: 3-29-04

By: Sam D. Hall
VP COMMERCIAL

Date: 3/29/04